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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,763	10/06/2003	Barry M. Yomtov	17509-0072	8563
29952 7590 09/22/2008 SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309				
EXAMINER				
GETZOW, SCOTT M				
ART UNIT		PAPER NUMBER		
3762				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/679,763

Applicant(s)

YOMTOV ET AL.

Examiner

/Scott M. Getzow/

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 20-39 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-17, 20-39 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

Previously non-elected claims 4,8-11,29,30 have been reinstated and have been examined as set forth below.

Claim Rejections - 35 USC § 112

1. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The 'body' lacks proper antecedent basis.

Claim Rejections - 35 USC § 103

2. Claims 1-5,7,12-17,22-28,39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loeb et al (6,051,017) in view of Greenberg et al (7,097,775).

Loeb is considered to teach an implantable device which allows for electrical stimulation as well as drug stimulation, see columns 9,10, and figures 4-6. Greenberg teaches a plurality of reservoirs with caps. The caps, as taught in column 8, disintegrate when an electric current runs through them. Such a mechanism of cap disintegration is believed to be by thermal heating, since current produces heat, as is known by the ordinary artisan. Thus, the mechanism to ablate the caps is considered to be thru electrothermal means. It would have been obvious to use the reservoirs of Greenberg with the device of Loeb since such would be a simple substitution of known prior art elements yielding a predictable result. Further, claims 12-17 are considered to be intended uses, not structural limitations.

3. Claims 6,8-11,20,21,29,30,31,32,35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loeb et al (6,051,017) in view of Greenberg et al (7,097,775), and further in view of Whitehurst et al (6,970,741)

Whitehurst teaches a device which can stimulate neural tissue and where the electrodes can be on a distal end of a lead, as shown in figure 4. Further, there can be a plurality of implanted devices which can each communicate with each other, and coordinate stimulation and drug therapy. To have such features with the device of Loeb and Greenberg would have been obvious in that such would be simple combination of prior art elements yielding a predictable result.

4. Claims 36,37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loeb et al (6,051,017) in view of Greenberg et al (7,097,775), and further in view of Darvish et al (7,190,997).

Darvish teaches a device where the drug matrix is located at the distal end of a lead, as shown in figure 4. To put the drug reservoir at such a location would have been obvious in that such would provide for better and more varied positioning of the drug therapy, in cases where the drugs were to be provided in locations other than where the electrodes were located.

5. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loeb et al (6,051,017) in view of Greenberg et al (7,097,775), and further in view of Mann et al (6,941,171).

Mann teaches treatment of incontinence. To use the device of Loeb and Greenberg for treatment of incontinence would have been obvious since the skilled artisan would be aware of the many uses such implantable stimulators have to treat a variety of patient conditions.

6. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loeb et al (6,051,017) in view of Greenberg et al (7,097,775), and further in view of Whitehurst (6,950,707).

Whitehurst teaches treatment of obesity. To use the device of Loeb and Greenberg for treatment of obesity would have been obvious since the skilled artisan would be aware of the many uses such implantable stimulators have to treat a variety of patient conditions.

7. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loeb et al (6,051,017) in view of Greenberg et al (7,097,775), and further in view of Ausiello et al (2004/0082937)

Ausiello teaches that using a multi layer of platinum and titanium for the caps is old and well known in the art. Thus, to use such with the device of Loeb and Greenberg would have been obvious.

Since new rejections have been made, this action is not made final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Scott M. Getzow/ whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/
Primary Examiner
Art Unit 3762

SMG